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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 002364

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DEPT FOR SA/FO, S/CT, SA/A, G KATE FRIEDRICH, G/IWI DIANNE
GRAHAM
NSC FOR AHARRIMAN, KAMEND
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SUBJECT: PARLIAMENT APPROVES ONLY TWO SUPREME COURT JUSTICES

REF: KABUL 1694

Classified By: POLCOUNS ANGUS SIMMONS FOR REASONS 1.4 (B) AND (D)

11. (SBU) SUMMARY. On Wednesday, May 24, the Afghan National Assembly approved only two of four Supreme Court Justices put to a vote. The two approved Justices - Mawlawi Mohammad Qasem and Mohammad Aleem Nasemi - are both Pashtun Sharia law faculty graduates. Of the five remaining Justices, three were rejected by voice vote due to concerns about dual citizenship. The fate of the other two (including Chief Justice Shinwari) will be debated on Saturday, May 27. END SUMMARY.

Vote Count

12. (SBU) Two hundred of the 249 Wolesi Jirga (WJ) MPs voted on the Supreme Court nominees. Notable among the absent members were Sayyaf, Rabbani and Mohaqeq, none of whom showed up to vote. The status of all the Supreme Court nominees is as follows:

Sheikh al-Hadees Fazel Hadi Shinwari - no vote (has not yet appeared before Parliament)
Mohammad Omar Mohmand - rejected by vote: 71 yes, 84 no, 4 invalid
Mawlawi Mohammad Qasem - approved by vote: 124 yes, 84 no, 3 invalid
Mohammad Qasem Hashemzai - rejected by voice vote (dual citizenship)
Mohammad Hussein Roostayi - no vote (educational credentials not confirmed/has not appeared before Parliament)
Shah Ali Azqar Shahrestani - rejected by vote: 92 yes, 115 no, 4 invalid
Bahaudin Baha - rejected by voice vote (green card holder)
Abdul Rasheed Rashed - rejected by voice vote (dual citizenship)

Mohammad Aleem Nasemi - approved by vote: 109 yes, 100 no, 2 invalid

Ethnic Politics at Play?

13. (C) The vote and debate on the Justices was greeted with general dismay by many members of Parliament, who stated that ethnic politics was at play. While some Pashtun MPs stated that Mohmand was rejected because he was Pashtun (many non-Pashtun MPs complained about the large number of Pashtuns on the panel of nominees), his halting speech before Parliament was more likely the deciding factor. The Shia Hazara Shahrestani, who was well-received by Parliament when he appeared before the WJ, was, however, very possibly the victim of conservative Sunni MPs not interested in having a Shia Justice. The approved judges - Qasem and Nasemi - are both Pashtun judges with university degrees in Sharia law (reftel).

Procedural Debate Likely to Continue

14. (SBU) The vote on the Supreme Court was preceded by two days of extended and often angry debate on the rules surrounding discussion of the Supreme Court (in particular, does Chief Justice Shinwari need to appear before Parliament) and the definition of a parliamentary majority (i.e., do abstaining votes count as present or absent votes). There was little to no discussion of the qualifications or opinions of the Justices voted upon. In order to come to a vote on the non-controversial Justices, the WJ temporarily decided to count abstaining votes as absent votes (as it had done during

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the Cabinet confirmation hearings) and to delay discussion of the Justices who have not been questioned by Parliament until Saturday, May 27. At that time, further procedural disagreement is likely to stall any decision-making process.

Comment

15. (C) The vote today was a preview of the more controversial debate over the confirmation of Chief Justice Shinwari. Shinwari's confirmation, as the sitting Chief Justice and head of the religious Ulema Council, is a touchstone for Pashtun MPs, particularly religious conservatives. They have fiercely defended Shinwari's right not to appear before Parliament, turning to procedural maneuvers when they found little support for arguments that Shinwari, as a religious judge, should not have to appear before Parliament. Shinwari has given no indication that he intends to be questioned by Parliament, and has hinted to international interlocutors that he thinks he will be confirmed, even while claiming he no longer wants to be Chief Justice. The strong defense offered by his supporters, though, indicates that Shinwari is still very much in play, and that his protestations may be more of a tactic to energize his backers while appearing to stay above the fray.

16. (C) While ethnic rivalries in Parliament have surfaced in this debate, ethnicity does not seem to be the defining factor in choosing Justices. The more likely cause of the current stalemate in Parliament is the movement of disagreements between Sayyaf and Qanooni into floor debate. Sayyaf has been openly critical of Qanooni's management several times over the past two days, and walked out of debate on May 23. Without Sayyaf there to influence conservative Pashtun MPs, Qanooni has not been able to control overall debate on the floor. The stakes in this debate are high - the Supreme Court's influence is extensive in both the civic and religious realms - and neither Sayyaf (Shinwari's main supporter) or Qanooni (suspected by some of seeking to advance the interests of his father-in-law, who is a lower-ranking judge in the Supreme Court) seems ready to

back down. END COMMENT.

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